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# VIOLENCE AGAINST CHILDREN AND INTEGRATED CHILD PROTECTION SYSTEMS IN THE EUROPEAN UNION

*Summary:* In line with international and European human rights instruments and standards, the EU Member States are under obligation to protect children from all forms of violence. The establishment of a holistic child protection system is the primary obligation of each EU Member State and a prerequisite for the effective protection of children. An integrated child protection system covers a wide range of comprehensive and integrated measures, and includes multi-disciplinary, cross-sectorial and inter-agency cooperation of all duty-bearers. Due to migration to the EU and mobility within the EU, the number of cross-border and transnational child protection situations has been increasing. These situations require cooperation between social welfare, judicial, investigative and other authorities in different EU Member States. This paper gives an overview of the EU legislation and policies relevant to child protection, and examines the EU's role in reinforcing the protection of children against violence.

*Keywords:* violence against children, child protection, children's rights, European Union

## 1. INTRODUCTION

Violence against children is a problem that has persisted throughout history. However, it was not until 1960s and the publication of "The battered child syndrome" by Kempe and associates that this problem became an area of concern to professionals and researchers.<sup>1</sup> In 2006, the United Nations conducted the first global, comprehensive study on all forms of violence

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1 Kempe, C. H., Silverman, F. N., Steel, B. F., Droegemueller, W., Silver, H. K., *The Battered-Child Syndrome*, Journal of the American Medical Association, No. 181, 1962, pp. 17-24, cited by Kempe, C. H., Silverman, F. N., Steel, B. F., Droegemueller, W., Silver, H. K., *The Battered-Child Syndrome*, Child Abuse and Neglect, Vol. 9, 1985, pp. 143. – 154.

against children titled “World report on violence against children”.<sup>2</sup> The aforementioned study revealed that, despite the broad acceptance of the UN Convention on the Rights of the Child (1989)<sup>3</sup> which prohibits all forms of violence against children, “children in almost all States are still waiting for full recognition of respect for their human dignity and physical integrity, and for adequate investment in actions to prevent all forms of violence against them”.<sup>4</sup> Violence against children is a global phenomenon that occurs in all parts of the world, regardless of economic, social or cultural differences. Some forms of violence against children, such as corporal punishment and harmful practices, are still culturally and socially accepted in many countries. EU Member States are no exception.

The establishment of a holistic national child protection system is the primary obligation of each EU Member State and a prerequisite for the effective protection of children from violence. The integrated child protection system covers a wide range of comprehensive and integrated measures and implies cooperation between social welfare, judicial, investigative and other authorities. Additionally, cross-border and transnational child protection situations require cooperation and mutual trust between different authorities in different EU Member States. However, EU Member States respond to violence against children in different ways, have different laws, different human and financial resources and different accountability mechanisms. This paper gives an overview of the EU legislation and policy relevant to child protection and examines the EU’s role in reinforcing the protection of children against violence.

## 2. VIOLENCE AGAINST CHILDREN

Violence against children is a complex and heterogeneous phenomenon that takes many forms. Accordingly, it is difficult to give a single comprehensive definition and conceptual model of the term. The UN Convention on the Rights of the Child obliges States Parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.<sup>5</sup> As one can see, Article 19(1) of the Convention on the Rights of the Child guarantees a child’s right to freedom from all forms of violence, but does not give an actual definition of the term. The “World Report on Violence Against Children” draws on the definitions of violence and child maltreatment given by the World Health Organization and defines violence against children as “the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s

2 Pinheiro, P. S., *World Report on Violence against Children*, United Nations, Geneva, 2006, p. 3.

3 Convention on the Rights of the Child, United Nations, Treaty Series, Vol. 1577, p. 3.

4 Pinheiro, *op. cit.* note 2, p. 5.

5 Convention on the Rights of the Child, Article 19(1).

health, survival, development or dignity”.<sup>6</sup> In line with this definition, violence against children consists of a wide range of different behaviors that can jeopardize the child’s well-being.

Violence against children is generally divided into four main categories: physical violence, mental (emotional) violence, sexual violence and neglect or negligent treatment. The Committee on the Rights of the Child complements this non-exhaustive list by adding the following specific forms of violence: corporal punishment, sexual abuse and exploitation, torture and inhuman or degrading treatment or punishment, violence among children (bullying), self-harm, harmful practices (e. g. female genital mutilation, forced and early marriage, “honor” crimes etc.), violence in the mass media, violence through information and communications technologies and institutional and system violations of child rights.<sup>7</sup> Adults are often perpetrators of violence, but violence may also occur among children. Furthermore, some children harm themselves. Violence against children also occurs in different settings where childhood is spent: home and family, school, care and justice system, workplaces and the community.<sup>8</sup>

Due to underreporting, inadequate investigations of children’s deaths and reports of violence, persistent social acceptance of some forms of violence against children and other factors, the exact number of children that have experienced violence remains unclear. There are also gaps between the prevalence rates in different studies on violence against children conducted all around the world.<sup>9</sup> However, the results of meta-analyses of studies on violence against children conducted in 2015 show that violence against children is a global phenomenon of considerable extent that touches the lives of millions of children.<sup>10</sup> Analyses of community surveys from Europe and around the world shows a prevalence rate of 9.6% for sexual abuse (13.4% in girls and 5.7% in boys), 22.9% for physical and 29.1% for mental violence.<sup>11</sup> Few studies have been done on neglect, but average prevalence rates are 16.3% for physical and 18.4% for emotional neglect.<sup>12</sup> Accordingly, about 18 million children in Europe suffer from sexual abuse, 44 million from physical abuse and 55 million from mental abuse.<sup>13</sup> Violence against children leads to the premature death of at least 852 children under 15 years in the European Region every year.<sup>14</sup> According to European Child Safety Alliance report, each year about 3000 deaths of children and adolescents aged 0-19 years in the EU are classified as

6 For more details, see: Pinheiro, *op. cit.* note 2, p. 4, and Krug, E. G., Dahlberg, L. L., Mercy, J. A., Zwi, A. B., Lozano, R. (eds.), *World Report on Violence and Health*, World Health Organization, Geneva, 2002, p. 5 and p. 59.

7 CRC, General comment No. 13 (2011): The Right of the Child to Freedom From all Forms of Violence, official websites of the United Nations, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en), pp. 11 – 12. Accessed 10 September 2017.

8 Pinheiro, *op. cit.* note 2, p. 7.

9 Stoltenborgh, M., Bakermans-Kranenburg, M. J., Alink, L. R. A., van IJzendoorn, M. H., *The Prevalence of Child Maltreatment across the Globe: Review of a Series of Meta-Analyses*, *Child Abuse Review*, Vol. 24, 2015, p. 47.

10 *Ibid.*, p. 48.

11 Sethi, D., Bellis, M., Hughes, K., Gilbert, R., Mitis, F., Galea, G., (eds.) *European Report on Preventing Child Maltreatment*, World Health Organization, Regional Office for Europe, Copenhagen, 2013, p. viii.

12 *Ibid.*

13 *Ibid.*

14 *Ibid.*

intentional or of undetermined intent.<sup>15</sup> The rate of child intentional injury deaths for EU-28 is 2.85 per 100.000 children aged 0-19 years for boys and 1.20 per 100.000 for girls.<sup>16</sup>

Violence against children has many short-term and long-term consequences for the victim, victim's family and the society. The consequences of violence experienced in childhood are, of course, acute injuries and reactions. In addition, problems that affect emotional, social and cognitive functioning are identified.<sup>17</sup> Childhood trauma is also related to increased risk of mental disorders, alcohol and drug abuse as well as physical diseases in adulthood.<sup>18</sup> Violence against children has a significant impact on economy. Direct costs of violence against children include medical costs, the costs of social and judicial services and the costs of the placement of children in care institutions or foster families. Indirect costs of violence against children are associated with reduced productivity, disability, reduced quality of life and early death. The results of a study conducted in Germany show that total annual costs, which incur as follow-up costs of child abuse and neglect, amount to EUR 11.1 billion.<sup>19</sup> In other words, the annual per capita trauma follow-up costs in Germany would amount to EUR 134.84.<sup>20</sup> Applying the costs of the pessimistic scenario the upper bound of the annual trauma follow-up cost frame in Germany is EUR 29.8 billion totals or EUR 363.58 per capita.<sup>21</sup>

### 3. INTEGRATED CHILD PROTECTION SYSTEM

#### 3.1. THE DEFINITION OF INTEGRATED CHILD PROTECTION SYSTEM

In the wider sense, "child protection" denotes the protection of children's rights in general terms.<sup>22</sup> However, the term "child protection" is more commonly used to denote the protection of children from violence.<sup>23</sup> In order to protect children from violence, it is necessary to establish national child protection systems. Spratt identified several common imperatives driving the development of child protection systems: epidemiological evidence for prevalence and effects of child abuse, the related need for early investment in children, centrality of chi-

15 MacKay, M., Vincenent J., *National Action to Address Child Intentional Injury - 2014: Europe Summary*, European Child Safety Alliance, Birmingham, 2014, p. 12.

16 *Ibid.*

17 For more details, see: Bilić, V., Buljan Flander, G., Hrpka, H., *Nasilje nad djecom i među djecom*, Naklada Slap, Jastrebarsko, 2012, p. 103 - 114.

18 Pinheiro, *op. cit.* note 2, p. 7.

19 Habetha, S., Bleich, S., Weidenhammer, J., Fegert, J. M., *A prevalence-based approach to societal costs occurring in consequence of child abuse and neglect*, Child and Adolescent Psychiatry and Mental Health, Vol. 6, 2012, online edition, <https://capmh.biomedcentral.com/track/pdf/10.1186/1753-2000-6-35?site=capmh.biomedcentral.com>, p. 5, Accessed 10 September 2017.

20 *Ibid.*

21 *Ibid.*

22 Stalford, H., *Children and the European Union: Rights, Welfare and Accountability*, Hart Publishing, London, 2012, p. 167.

23 *Ibid.*

children's rights and international league tables comparing performance in protection arrangements for children.<sup>24</sup>

UNICEF Child Protection Strategy (2008)<sup>25</sup> defines child protection systems as “a set of laws, policies, regulations and services needed across all social sectors — especially social welfare, education, health, security and justice — to support prevention and response to protection-related risks”.<sup>26</sup> It stresses out that these systems are part of social protection, but extend beyond it.<sup>27</sup> At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation.<sup>28</sup> The Committee on the Rights of the Child highlights that a holistic child protection system requires the provision of comprehensive and integrated measures across stages identified in Article 19(2) of the UN Convention on the Rights of the Child.<sup>29</sup> Those stages include prevention, identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, and, as appropriate, judicial involvement. In 2015, European Commission defined integrated child protection system as “the way in which all duty-bearers (namely the state authorities represented by law enforcement, judicial authorities, immigration authorities, social services, child protection agencies, etc.) and system components (e.g. laws, policies, resources, procedures, processes, sub-systems) work together across sectors and agencies sharing responsibilities to form a protective and empowering environment for all children”.<sup>30</sup> According to some authors, child protection measures can be divided into three main categories: a) laws, regulations and policies; b) education, training, service programs, and data management; and c) the status and progress of the child's well-being, health and development.<sup>31</sup>

There are two main approaches to responding to violence against children: child protection orientation and family service orientation.<sup>32</sup> As Gilbert states, these two orientations are distinguished along four dimensions: the way the problem of violence against children was framed, response to child abuse, state-parent relationship, and out-of-home care.<sup>33</sup> In child protection-oriented system violence against children is conceived as an act that demands the protection of children from harm, the response to violence is legalistic and investigatory in order to assess the needs and formulate a child safety plans, child welfare professionals functi-

24 Spratt, T., Nett, J., Bromfield, L., Hietamäki, J., Kindler, H., Ponnert, L., *Child Protection in Europe: Development of an International Cross-Comparison Model to Inform National Policies and Practices*, British Journal of Social Work, Vol. 45, No. 5, 2015, p. 1512.

25 UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1, 20 May 2008, official websites of the UNICEF, [https://www.unicef.org/protection/CP\\_Strategy\\_English\(1\).pdf](https://www.unicef.org/protection/CP_Strategy_English(1).pdf). Accessed 10 September 2017.

26 *Ibid.*, para. 12.

27 *Ibid.*

28 *Ibid.*

29 CRC, General comment No. 13 (2011), note 7, para. 45.

30 *Coordination and Cooperation in Integrated Child Protection Systems, Reflection paper for the 9<sup>th</sup> European Forum on the Rights of the Child*, European Commission, 30 April 2015, official websites of the European Union, [http://ec.europa.eu/justice/fundamental-rights/files/2015\\_forum\\_roc\\_background\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/2015_forum_roc_background_en.pdf), p. 3. Accessed 10 September 2017.

31 Svevo-Cianci, K. A., Hart, S. N., Rubinson C., *Protecting Children from Violence and Maltreatment: A Qualitative Comparative Analysis Assessing the Implementation U. N. CRC Article 19*, Child Abuse and Neglect, No. 34, 2009, p. 46.

32 Gilbert, N., Parton, N., Skivenes, M., (eds.) *Child Protection Systems – International Trends and Orientations*, Oxford University Press, New York, 2011, p. 3.

33 *Ibid.*, pp. 3-4.

on in an adversarial way, and out-of-home placements are mainly involuntary.<sup>34</sup> On the other hand, family service-oriented systems conceive violence against children as a result of family conflict or dysfunction that arose from social and psychological difficulties, offer therapeutic response to family's needs, child welfare professionals function in a spirit of partnership with parents and out-of-home placements are mainly voluntary.<sup>35</sup> Child protection orientation is characteristic to Anglo-American countries (including United Kingdom), while Continental European and Nordic countries approach the problem of violence from a family service orientation.<sup>36</sup> These two models of child protection seem potentially conflicting. However, most countries are trying to integrate both models. It requires flexible approach that focuses on family support as long as the development or security of the child is not significantly endangered.<sup>37</sup>

### 3.2. INTEGRATED CHILD PROTECTION SYSTEMS IN EU MEMBER STATES

In addition to different approaches to child protection, each of the 28 EU Member States has a unique historical, social and cultural background that has influenced the development of its national child protection system. The European Agency for Fundamental Rights (FRA) conducted research on national child protection systems in the 28 EU Member States and published its findings in a report "Mapping Child Protection Systems in the EU".<sup>38</sup> The report reveals how national child protection systems operate and how they address the specific needs of particular groups of children, while also examining national and transnational coordination and interagency cooperation. It also reveals many differences between national child protection systems in the EU (different laws, different human and financial resources and different accountability mechanisms).

National child protection systems in the EU Member States share some common challenges in preventing and responding to violence against children, with some of these challenges being complexity of different regulations, regimes and rights applicable, inadequate funding and human resources, lack of operational coordination and cooperation mechanisms horizontally and vertically; lack of supporting guidance and protocols, which can result in competition among agencies or services and insufficient attention to prevention.<sup>39</sup>

Transnational and cross-border elements add complexity to dealing with violence against children and demand cooperation between child protection systems in different EU Member

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*, p. 4.

37 Sladović Franz, B., *Djeca u alternativnoj skrbi*, in: Hrabar, D. (ed.), *Prava djece – multidisciplinarni pristup*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, p. 227.

38 *Mapping Child Protection Systems in the EU*, European Agency for Fundamental Rights, February 2015, official websites of the European Agency for Fundamental Rights, <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu>. Accessed 10 September 2017.

39 For more details, see *Challenges Identified For Integrated Child Protection Systems*, official website of the European Union, [http://ec.europa.eu/justice/fundamental-rights/files/cps\\_annex\\_challenges.pdf](http://ec.europa.eu/justice/fundamental-rights/files/cps_annex_challenges.pdf). Accessed 10 September 2017.

States. Some of the challenges in transnational and cross-border situations are difficulties in identifying counterparts in other EU Member State, lack of clarity on roles and responsibilities, lack of country of origin information, lack of formal cooperation procedures, guidance and protocols concerning a child from another country, or transfers of children across borders and lack of transnational networks.<sup>40</sup>

The theme of the 9<sup>th</sup> European Forum on the Right of the Child<sup>41</sup> was coordination and cooperation in integrated child protection systems. In the Reflection Paper for the Forum, European Commission presented 10 Principles for integrated child protection systems (hereafter referred to as: the Principles).<sup>42</sup> The Principles include non-discrimination and recognition, respect and protection of every child as a rights holder. Child protection systems that are in line with the Principles should include prevention measures, support families in their role as primary caregiver and ensure adequate care, support and protection for all children. Integrated child protection systems should also have transnational and cross-border mechanisms in place. They should deliver training on identification of risks to a wide range of people working for and with children and ensure safe, well-publicized, confidential and accessible reporting mechanisms. Child protection systems should also ensure that society as a whole is aware and supportive of the child's right to freedom from all forms of violence.

## 4. EUROPEAN UNION'S LEGAL FRAMEWORK RELEVANT TO CHILD PROTECTION

### 4.1. EU LEGISLATION RELEVANT TO CHILD PROTECTION AND INTEGRATED CHILD PROTECTION SYSTEMS

The primary goal of the establishment of the European Union was not the protection of human rights, but the strengthening of the economic development of its Member States. However, in the last few decades the European Union has become an important regional factor in human rights protection, including the protection of the rights of the child. Article 3(3) of the Treaty on European Union<sup>43</sup>, as amended by Treaty of Lisbon<sup>44</sup>, introduced protection of the rights of the child as one of the EU's core values. Additionally, article 3(5) of the Treaty on European Union identifies "protection of human rights, in particular the rights of the child"

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<sup>40</sup> *Ibid.*

<sup>41</sup> The European Forum on the Rights of the Child was launched following the adoption of the European Commission Communication Towards the EU strategy on the rights of the child in 2006. It is organized and chaired by the European Commission and meets annually (apart from 2014) and brings together a wide range of stakeholders (ombudspersons for children, representatives of the EU's institutions, the Council of Europe, international organizations, NGO's etc.) to exchange information and good practice on the rights of the child. For more details, see: *The European Forum on the Rights of the Child*, official websites of the European Union, [http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index_en.htm). Accessed 10 September 2017.

<sup>42</sup> *Coordination and Cooperation in Integrated Child Protection Systems*, *op. cit.* note 30, pp. 10-11.

<sup>43</sup> Consolidated version of the Treaty on European Union, *Official Journal of the European Union*, C 326, 26 October 2012, pp. 1 – 390.

<sup>44</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, *Official Journal of the European Union*, C 306, 17 December 2007, pp. 1–271.

as an important segment of the EU's external relations policy. Consolidated Version of the Treaty on the Functioning of the European Union<sup>45</sup> (hereafter referred to as: TFEU) includes two explicit references to children. According to Article 79(2d) of the TFEU, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, are competent to adopt measures for combating trafficking in persons, in particular women and children. According to Article 83(1) of the TFEU the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the area of, *inter alia*, trafficking in human beings and sexual exploitation of women and children.

Obligation to protect the rights of the child is an explicit objective in the Charter of Fundamental Rights of the European Union<sup>46</sup> (hereafter referred to as: the Charter). The Charter applies equally to all, but Article 24(1) of the Charter stresses children's vulnerability and need for special protection, and acknowledges children's right to such protection and care as is necessary for their well-being. Article 24 of the Charter also acknowledges children's right to express their views freely (Art. 24(1) of the Charter) and sets children's best interests as the primary consideration in all actions relating to them, whether taken by public authorities or private institutions (Art. 24(2) of the Charter). Other substantive rights contained in the Charter are also important in the context of child protection: right to integrity of the person (Art. 3 of the Charter), prohibition of torture and inhuman or degrading treatment or punishment (Art. 4 of the Charter), prohibition of slavery and forced labour (Art. 5 of the Charter) and prohibition of child labour and protection of young people at work (Art. 32 of the Charter).

There are several EU secondary law documents relevant to child protection. Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA<sup>47</sup> establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of sexual abuse and exploitation of children and provisions on victim assistance and support measures. Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA<sup>48</sup> contains a number of provisions relating to the protection of children from trafficking in human beings. In the preamble, it highlights the vulnerability of children, the need for specific assistance, support and protective measures for child victims of trafficking and the best interest of the child as primary consideration in the application of the Directive.<sup>49</sup> It also

45 Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C 326, 26 December 2012, pp. 47-201.

46 Charter of Fundamental Rights of the European Union, Official Journal of the European Union, C 326, 26 December 2012, pp. 391-407.

47 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, replacing Council Framework Decision 2004/68/JHA, Official Journal of the European Union, L 335, 17 December 2011, pp. 1-14.

48 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union, L 101/1, 15 April 2011, pp. 1-11.

49 *Ibid*, preamble, paras 8, 12, 22 and 25.

contains several articles that relate entirely to assistance, support and protection measures for child victims of trafficking in human beings.<sup>50</sup>

The purpose of the Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012)<sup>51</sup> (hereafter referred to as: The Victims' Rights Directive) is to ensure that victims of crime receive appropriate information, support and protection, and are able to participate in criminal proceedings. The Victims' Rights Directive includes extensive provisions for child victims.<sup>52</sup> and, *inter alia*, provides for special measures for protection of child victims during criminal proceedings (Art. 24 of the Victims' Rights Directive). Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>53</sup> establishes procedural safeguards to ensure that children, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings, to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.

Some aspects of EU procedural law applicable in cross-border and transnational child protection situations, e. g. legislation regulating mutual recognition of decisions concerning protection measures for victims of a crime and protection measures in civil matters among the EU Member States, are also relevant in creating integrated and cooperating child protection systems in the European Union. In this context, one should mention the following EU legislation: Directive 2011/99/EU of 13 December 2011 on European protection order<sup>54</sup>, Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of protection measures in civil matters (2013)<sup>55</sup> and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000<sup>56</sup> (also known as the Brussels IIa Regulation).

In the last few years, migration to the EU has brought new challenges in child protection. Children in migration are especially vulnerable and exposed to a greater risk of violence, exploitation and trafficking in human beings. In order to reduce that risk, it is necessary to form closer ties between authorities working on asylum and migration and those on child protection. It is also necessary to ensure that all EU Member States apply common standards

<sup>50</sup> *Ibid.*, Arts. 13, 14, 15 and 16.

<sup>51</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012), Official Journal of the European Union, L 315, 14 November 2012, pp. 57-73.

<sup>52</sup> For more details, see *ibid.*, preamble, paras 14, 17, 19, 38, 42, 54, 57, 60, 66 and 69 and Arts 1(3), 10(1), 21(1), 22(4).

<sup>53</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132, 21 May 2016, pp. 1-20.

<sup>54</sup> Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on European protection order, Official Journal of the European Union, L 338, 21 December 2011, pp. 2-18.

<sup>55</sup> Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, Official Journal of the European Union, L 181, 29 June 2013, pp. 4-12.

<sup>56</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official Journal of the European Union, L 338, 23 December 2003, pp. 1 - 29.

for safeguards and guarantees in asylum procedure, detention conditions, family reunification and other areas relevant to the protection of children in migration. Common standards are set down by several regulations and directives that contain specific references to children. Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)<sup>57</sup> (hereafter referred to as: Reception Conditions Directive) sets standards for detention conditions for children. It also highlights that by applying the Directive Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity.<sup>58</sup> Reception Conditions Directive provides rules designed to ensure access to education for children (Art. 14 of the Reception Conditions Directive), rules on the protection of physical and mental health, on ensuring adequate living standards, and rules for the placement and family tracing for unaccompanied children (Arts. 23 and 24 of the Reception Conditions Directive). It also obliges Member States to ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counseling is provided when needed (Art. 23(4) of the Reception Conditions Directive). Article 25 of the Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection<sup>59</sup> (Asylum Procedures Directive) contains special guarantees for children (unaccompanied minors) during those procedures. Directive 2008/115/EU of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>60</sup> (hereafter referred to as: Return Directive) sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals. It contains provisions on taking due account of the best interest of the child (Art. 5(a) of the Return Directive) and special provisions on return and removal of unaccompanied minors (Art. 10 of the Return Directive). Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person<sup>61</sup> (hereafter referred to as: Dublin Regulation) contains specific guarantees for children, emphasizing the best interest of the child and cooperation of the Member States in assessing the best interests of the child (Art. 6 of the Dublin Regulation). The purpose of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification<sup>62</sup> is to determine the conditions for the

57 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Official Journal of the European Union, L 180, 29 June 2013, pp. 96-116.

58 *Ibid.*, preamble, para. 9.

59 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Official Journal of the European Union, L 180, 29 June 2013, pp. 60-95.

60 Directive 2008/115/EU of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Official Journal of the European Union, L 348, 24 December 2008, pp. 98-107.

61 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, Official Journal of the European Union, L 180, 29 June 2013, pp. 31-59.

62 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal of the European Union, L 251, 3 October 2003, pp. 12-18.

exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

#### 4.2. EU SOFT-LAW INSTRUMENTS RELEVANT TO CHILD PROTECTION AND INTEGRATED CHILD PROTECTION SYSTEMS

Soft-law instruments have a significant role in the EU's efforts to promote and to protect the rights of the child in general. They also play a significant role in the EU's efforts to strengthen the national integrated child protection systems and to improve cooperation between child protection systems of its Member States. In 2006, European Commission adopted Communication Towards an EU Strategy on the Rights of the Child<sup>63</sup>, the first initiative taken at the Commissions level to safeguard the rights of the child at the level of EU institutions and Member States.<sup>64</sup> Another important moment in the protection of the rights of the child was the adopting of the Agenda for the Rights of the Child (2011)<sup>65</sup> (hereafter referred to as: the Agenda). The Agenda, adopted by the European Commission, included eleven actions in four areas and introduced three general principles that should ensure that the EU action is exemplary in ensuring the respect of the provisions of the Charter and of the UN Convention on the Rights of the Child.<sup>66</sup> These three principles are: making the rights of the child an integral part of the EU's fundamental rights, building the basis for evidence-based policymaking and cooperation with all stakeholders.<sup>67</sup>

There are several other non-binding instruments relevant to integrated child protection systems. The EU Strategy towards the eradication of trafficking in human beings 2012-2016<sup>68</sup> highlighted that comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination, are key in catering to diverse needs of diverse groups of children, including victims of trafficking.<sup>69</sup> It contained a list of actions aimed at achieving the five priorities as identified in the Strategy.<sup>70</sup> European Commission Communication COM

63 Communication from the Commission: Towards an EU Strategy on the Rights of the Child, COM (2006) final, 4 July 2006, Brussels, official websites of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:en:PDF>. Accessed 10 September 2017.

64 Iusmen, I., *Children's Rights, Eastern Enlargement and EU Human Rights Regime*, Manchester University Press, Manchester, 2014, p. 102.

65 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - An EU Agenda for the Rights of the Child, COM(2011) 0060 final, official websites of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0060&from=en>. Accessed 10 September 2017.

66 *Ibid.*, p. 4.

67 *Ibid.*, pp. 4 – 6.

68 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions the EU strategy towards the eradication of trafficking in human beings 2012–2016, 19 June 2012, COM(2012) 0286 final, official websites of the European Union, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0286>. Accessed 10 September 2017.

69 *Ibid.*, point 2.1, action 3.

70 Priorities identified in the EU Strategy towards the eradication of trafficking in human beings are: identifying, protecting and assisting victims of trafficking, stepping up the prevention of trafficking in human beings, increased prosecution of traffickers,

(2013) 833 final: Towards the Elimination of Female Genital Mutilation<sup>71</sup> contains a list of objectives and action aimed at better understanding and preventing female genital mutilation, promoting effective prevention and victim support measures, and supporting Member States' in enforcement of laws prohibiting this harmful practice which is present in many African countries and which has, due to migration, found its way to the EU Member States.

Communication on Protecting Children in the Digital World<sup>72</sup> analyses the implementation and effectiveness of measures for the protection of children while using electronic media, and stresses the importance of control systems and better cooperation and protection concerning problematic Internet content.

Commission Recommendation of 20 February 2013 Investing in Children: Breaking the Cycle of Disadvantage<sup>73</sup> suggests that Member States should organize and implement policies to address child poverty and social exclusion, promotes children's well-being through multi-dimensional strategies, and provides Member States with guidelines for achieving these goals. It highlights that, while policies addressing child poverty are primarily the competence of Member States, a common European framework can strengthen synergies across relevant policy areas, help Member States review their policies and learn from each other's experiences in improving policy efficiency and effectiveness through innovative approaches, whilst taking into account the different situations and needs at local, regional and national level.<sup>74</sup> It also explains how the EU financial instruments can be better mobilized in order to break the cycle of disadvantage and give children (especially those facing multiple disadvantages) a better start in life.

European disability strategy 2010-2020<sup>75</sup> provides a framework for action at European level, as well as with national action to address the diverse situation of men, women and children with disabilities. It, among other things, promotes the transition from institutional to community-based care by using Structural Funds and the Rural Development Fund to support

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enhanced coordination and cooperation among key actors and policy coherence and increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. *Ibid.*, point 2.

- 71 Communication from the Commission to the European Parliament and the Council, COM (2013) 833 final: Towards the elimination of female genital mutilation, 25 November 2013, official websites of the European Union, [http://ec.europa.eu/justice/gender-equality/files/gender\\_based\\_violence/131125\\_fgm\\_communication\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_based_violence/131125_fgm_communication_en.pdf). Accessed 10 September 2017.
- 72 Report from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry-protecting children in the digital world, COM (2011) 0556 final, official websites of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0556>. Accessed 10 September 2017.
- 73 Commission Recommendation of 20 February 2013 investing in children: breaking the cycle of disadvantage (2013/112/EU), Official Journal of the European Union, L 59, 2 March 2013, pp. 5-16.
- 74 *Ibid.*, preamble, para. 16.
- 75 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM (2010) 636 final, 15 November 2010, official websites of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>. Accessed 10 September 2017.

the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children.<sup>76</sup>

The first priority area of the EU Guidelines for the promotion and the protection of the rights of the child<sup>77</sup> adopted in 2007 (hereafter referred to as: 2007 EU Guidelines), which reaffirmed the EU commitment to promote and protect the rights of the child in its external relations, were “all forms of violence against children”. Since the adoption of 2007 EU Guidelines, many things concerning child protection have changed globally, thus making the revision of the Guidelines necessary. The purpose of the revised EU Guidelines on the promotion and protection of the rights of the child<sup>78</sup>, adopted in 2017, is to recall international standards on the rights of the child and to provide practical guidance to officials of the EU institutions and EU Member States in order to strengthen their role in promoting and protecting the rights of all children in EU external action.<sup>79</sup>

In the context of integrated child protection systems, one should also mention The EU Action Plan on Human Rights and Democracy (2015-2019)<sup>80</sup> and Guidance document related to the transposition and implementation of the Victims’ Rights Directive.<sup>81</sup>

## 5. EUROPEAN UNION’S ROLE IN CHILD PROTECTION AND THE DEVELOPMENT OF THE INTEGRATED CHILD PROTECTION SYSTEMS IN ITS MEMBER STATES

The number of legislative and policy documents relevant to child protection shows that European Union has finally accepted the protection of the rights of the child as one of the important areas of its action in both Union affairs and its external relations.<sup>82</sup> As Stalford notices, child protection has drawn the EU’s attention to much greater extent than other aspects of children’s rights and standard rationale for non-intervention in issues that are regarded as more appropriately addressed at the national level seems to present less of a barrier in the context of child protection.<sup>83</sup> However, the role of European Union in the development of national

<sup>76</sup> *Ibid.*, p. 6.

<sup>77</sup> EU Guidelines for the Promotion and the Protection of the Rights of the Child, 10 December 2007, official websites of the European Union, <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf>. Accessed 10 September 2017.

<sup>78</sup> EU Guidelines for the Promotion and the Protection of the Rights of the Child (2017), official websites of the European Union, [https://eeas.europa.eu/sites/eeas/files/eu\\_guidelines\\_rights\\_of\\_child\\_2017.pdf](https://eeas.europa.eu/sites/eeas/files/eu_guidelines_rights_of_child_2017.pdf). Accessed 10 September 2017.

<sup>79</sup> *Ibid.*, p. 5

<sup>80</sup> EU Action Plan on Human Rights and Democracy (2015-2019), 20 July 2015, official websites of the European Union, [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf). Accessed 10 September 2017.

<sup>81</sup> Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, December 2013, official websites of the European Union, <https://e-justice.europa.eu/fileDownload.do?id=05758a3a-9e2e-49a5-a7ec-3737c3ad6876>. Accessed 10 September 2017.

<sup>82</sup> Majstorović, I., *Europski obiteljskopравни sustav zaštite prava djece*, in: Hrabar, D., (ed.) Prava djece – multidisciplinarni pristup, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, p. 57.

<sup>83</sup> Stalford, *op. cit.* note 22, pp. 167 – 168.

integrated child protection systems and consequently in improving the position of children and their protection from violence should be further assessed.

Since the EU's approach to the rights of the child is different from that of the Council of Europe and other international organizations, it has great potential in ensuring children higher levels of protection.<sup>84</sup> In questions relating to child protection and integrated child protection systems, the EU operates in several ways. First, as seen in the previous sections of this paper, the EU has developed several legislative instruments relevant to child protection systems with the goal of harmonizing certain segments of child protection. The harmonization of national child protection systems facilitates cooperation and recognition of decisions of competent authorities in different EU Member States.

Second, the EU incorporates international child protection standards and principles, guaranteed by international and regional human rights instruments, into its own legislation and policy creating. In doing so, it enforces those standards with its own measures. Stalford notices that, in practice, EU measures are more efficient and easily enforced because they are subject to judicial scrutiny, while the enforcement of international instruments rely largely on political pressure and willingness of individual Member States.<sup>85</sup> Since the adoption of the Communication Towards an EU Strategy on the Rights of the Child, UN Convention on the Rights of the Child has a prominent position in the EU's child rights policy and serves as a framework for all EU's actions regarding the rights of the child. In the case of *Dynamic Medien* the Court of Justice even used UN Convention on the Rights of the Child to trump the fundamental freedoms associated with free movement of goods between Member States.<sup>86</sup>

Third, since the European Union is a *sui generis* organization, it uses specific mechanisms (financial programmes, pre-accession negotiations and EU agencies) to enhance the child protection levels and to ensure development and cooperation between national, integrated child protection systems. The EU financial programmes cover a wide range of activities. For example, in the last 20 years the Daphne Initiative and later Daphne Programme<sup>87</sup> aimed to contribute to the protection of children, young people and women against all forms of violence. The Daphne programme continues in the period 2014-2020 as a part of the Rights, Equality and Citizenship Programme 2014–2020<sup>88</sup>.

The EU also uses the human rights conditionality in pre-accession negotiations. This was the case with Eastern European candidates, especially Romania. During pre-accession, the EU's intervention in human rights provisions in Romania, with the focus on child protection, went well beyond the EU's internal role and mandate in human rights relation to the Member

84 Majstorović, *loc. cit.* note 82.

85 For more details, see: Stalford, *op. cit.* note 22, p. 183.

86 Judgement in the Case C-244/06 *Dynamic Medien Vertriebs GmbH v. Avidesdia AG*, 14 February 2008, official websites of the Court of Justice of the European Union, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d-2dc30d6e44cc99-086b4441288a4fb93595c7068.34KaxiLc3qMb40Rch0SaxyMb3r0?text=&docid=71569&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=335874>. Accessed 10 September 2017.

87 For more details, see: *The Daphne Toolkit*, official websites of the European Union, <http://ec.europa.eu/justice/grants/results/daphne-toolkit/>. Accessed 10 September 2017.

88 Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 Text with EEA relevance, Official Journal of the European Union, L 354, 28 December 2013, pp. 62–72.

States.<sup>89</sup> As Iusmen argues, the Romanian case raised awareness of the problems faced by children in the EU and provided the political opportunity for the EU institutions to initiate action in children's rights at the EU level.<sup>90</sup>

The EU agencies also play an important role in child protection, especially in cross-border and transnational situations. Agencies such as European Union Agency for Law Enforcement Cooperation (EUROPOL) and EUROJUST assist Member States in their fight against international crime involving children in cross-border cases (e.g. child trafficking, sexual abuse, and cybercrimes). European Asylum Support Office (EASO) enhances practical cooperation on asylum matters and European Union Agency for Fundamental Rights (FRA) plays a particularly important role in gathering data on rights of the child.

## 6. CONCLUSION

Each EU Member State creates its own national child protection system. Since the European Union has accepted the protection of the rights of the child, especially the protection of children from violence as one of the important areas of its action, the EU's legislation, activities and policies have influenced the development of national child protection systems in the EU Member States. However, the EU's activities regarding child protection have several limitations. European Union, as *sui generis* organization, has limited legal competence in child protection and its scope to act often depends on the current political situation. The EU also has to balance between measures and activities aimed at strengthening economic development and the EU's security on one hand, and measures and activities in the area of child protection on the other hand. One of the examples of this ambivalence is current migration situation. Free movement of persons increases the number of cross-border and transnational child protection situations which demand cooperation between different national child protection systems and complicates the detection and fight against violence and criminal acts involving children.

In order to address the omnipresent problem of violence against children properly, adequate measures and mechanisms have to be in place. However, violence against children is a complex phenomenon that cannot be addressed by a single regulation or a strategy. It requires creation of a well-organized and integrated child protection system that includes comprehensive measures at the level of prevention, identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, and, when appropriate, judicial involvement. Different social, economic, cultural and personal factors contribute to violence against children. These risk factors should also be addressed both at national and the EU level. All of this requires the acceptance of child-rights based approach, reinforcement of cooperation and coordination among different institutions, agencies and authorities in child protection cases and data collection and exchange. The European Union's activities add value to child protection. However, there is still much to be done in the future.

89 Iusmen, *op. cit.* note 64, p. 2-3.

90 *Ibid.*, pp. 99-100.

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## NASILJE NAD DJECOM I INTEGRIRANI SUSTAVI ZA ZAŠTITU DJECE U EUROPSKOJ UNIJI

### Sažetak

U skladu s međunarodnim i europskim instrumentima i standardima za zaštitu ljudskih prava, države članice Europske unije su obvezne zaštititi djecu od svih oblika nasilja. Uspostava holističkog sustava za zaštitu djece je ujedno glavna obveza svake države članice Europske unije i preduvjet za učinkovitu zaštitu djece. Integrirani sustav za zaštitu djece obuhvaća širok raspon sveobuhvatnih i integriranih mjera te uključuje multidisciplinarnu, međusektorsku i međuagencijsku suradnju svih sudionika. Uslijed migracija u Europsku uniju i mobilnosti unutar Europske unije, broj prekograničnih i transnacionalnih situacija za zaštitu djece raste. Te situacije zahtijevaju suradnju između ustanova socijalne skrbi, te pravosudnih, istražnih i drugih tijela u različitim državama članicama Europske unije. U radu se daje prikaz zakonodavstva i politika Europske unije relevantnih za zaštitu djece, te analizira uloga Europske unije u jačanju zaštite djece od nasilja.

*Ključne riječi:* nasilje nad djecom, zaštita djece, prava djeteta, Europska unija



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